

**Highlights of the Changes to Michigan's Cleanup Programs
in Public Act 446 of 2012¹
Prepared by the Michigan Department of Environmental Quality (MDEQ)
January 2, 2013**

CAUTION: This document only highlights major changes to the cleanup programs instituted by [Public Act 446 of 2012 \(Enrolled Senate Bill 1328\)](#). The reader should consult Public Act 446 of 2012 and the [bold/strike version of Senate Bill 1328](#) available at the [Michigan Legislative Website](#). There are numerous changes to the Natural Resources and Environmental Protection Act, [1994 PA 451](#). Most of the amendments impact Part 196, Part 201, and Part 213, but there are a few amendments to Part 115, and one amendment to Part 147.

Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451 (Act 451), Amendments:

No Further Action Reports

The amendments clarify that a person may submit a No Further Action (NFA) Report regardless of whether that person is liable or not liable for the contamination contained in the report. The amendment also clarifies that NFA Reports may address:

- One or more releases at a facility
- One or more hazardous substances
- One or more environmental media
- The entire facility or a portion of a facility
- Any combination of the above

Certificate of Completion

The amendments authorize the MDEQ to issue a "Certificate of Completion" to parties, upon request, for completion of a response activity. The certificate provides confirmation from the MDEQ that the response activity was completed in compliance with Part 201 and is approved by the MDEQ.

Soil Relocation

The amendments clarify and streamline the regulation of onsite and offsite relocation of contaminated soil at Part 201 sites. In addition to defining contaminated soils, the

¹ This document only covers the changes to Part 201, Environmental Remediation, and Part 213, Leaking Underground Storage Tanks, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended (Act 451). See the legislation for other changes to Act 451.

legislation exempts relocated soil from becoming a new “facility” under Part 201, or a solid waste under Part 115, Solid Waste Management, of Act 451.

Indoor Air Inhalation and MIOSHA Criteria

The amendments include provisions for operating facilities subject to the Michigan Occupational Safety and Health Administration (MIOSHA) to achieve compliance for indoor air criteria under Part 201 by complying with MIOSHA standards. This is limited to manufacturing facilities only.

Site-Specific Cleanup Criteria

The amendments broaden the use of site-specific criteria to include non-numeric criteria and numeric criteria in evaluating the toxicity and exposure risk for sites. Site-specific criteria may be used in a response activity if it can be demonstrated that this criteria better reflects the best available information related to that substance and the site conditions.

Liability Exemption

The amendments add persons owning or occupying residential condominiums to the exemption from liability as long as the contamination in the unit is from the use of a hazardous substance consistent with residential use or contamination of any common areas where the person has an ownership interest or right of occupancy.

Cleanup Criteria

The amendments extend the deadline for revision of cleanup criteria from December 31, 2012, to December 31, 2013.

Rescinded Part 201 Rules

A number of the Part 201 rules have been rescinded with immediate effect and others are scheduled to be rescinded December 31, 2013.

Part 213, Leaking Underground Storage Tanks, of Act 451 Amendments

The amendments have added an option of using Part 201, in lieu of Part 213, for evaluation and corrective actions related to the venting groundwater pathway.

The amendments clarify the terminology for owner or operator throughout Part 213 so that liable and non-liable parties are appropriately distinguished and non-liable parties are given the flexibility to conduct Baseline Environmental Assessments, due care analyses, and corrective actions.

Part 201 and Part 213 Amendments Covering Due Care Compliance

In many lending scenarios, including Small Business Administration loans, a person is often required by the lender to obtain the MDEQ's approval of an analysis of the Part 201 and Part 213 "due care" obligations at a property. Neither Part 201, nor Part 213, contained a mechanism to obtain the approval. The amendments provide new processes under both Part 201 and Part 213 to enable a person to submit due care documentation to the MDEQ for approval. The MDEQ must review and respond to the request within 45 days to accommodate the transactional timeframe of loans and property transfers.

Questions:

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Part 213: Dennis Eagle, Remediation and Redevelopment Division, MDEQ, 517- 335-4918, eagled@michigan.gov.

For site-specific questions, please contact the MDEQ's Remediation and Redevelopment Division staff in the respective [district office](#).

For website and listserver questions, please contact Susan Norton, Remediation and Redevelopment Division, MDEQ at 517-373-2113, or by e-mail at nortons1@michigan.gov.